

**** E-filed May 10, 2012 ****

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ATTORNEYS FOR Defendant
Cleves Research LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERRY PARTLOW,

Plaintiff,

vs.

CLEVES RESEARCH LLC, et al.

Defendants.

CASE #: C 11-05647 HRL

**STIPULATION AND ~~PROPOSED~~
ORDER TO CONTINUE MEDIATION
PURSUANT TO CIVIL LOCAL RULE 7-
12 and ADR LOCAL RULE 6-5**

**Action Filed: October 14, 2011
Trial Date: April 18, 2013**

I. INTRODUCTION

Plaintiff Perry Partlow and Defendant Cleves Research, LLC file this stipulated joint request to continue the current mediation date of May 10, 2012. Good cause exists to extend the mediation date. Plaintiff Perry Partlow and co-defendant Advantage Technical Resourcing have come to terms on a settlement agreement. On Friday, May 4, 2012, Cleves Research LLC was provided notice of that agreement and that Advantage Technical Resourcing would not be participating in the upcoming mediation. When Cleves Research, LLC inquired about the terms of that settlement, it was advised that the terms were the subject of a confidentiality agreement. Cleves maintains that it is entitled to discover the terms of the settlement so that it can value the potential available off-set to

1 which it would be entitled. Advantage and plaintiff contend that Cleves is not entitled to
 2 discovery of the settlement terms. The non-settling parties request a short extension of
 3 the mediation date so that this dispute can be resolved and negotiations can continue
 4 without incurring the costs of mediation preparation.

5 **II. STATEMENT OF FACTS**

6 Trial is set for April 18, 2013. The current deadline to complete mediation is May 10,
 7 2012. On Friday, May 4, 2012, counsel for Plaintiff Perry Partlow provided notice that a
 8 settlement had been reached between Plaintiff and Co-Defendant Advantage Technical
 9 Resourcing. The notice advised that Advantage Technical Resourcing would no longer be
 10 participating in the May 10, 2012 mediation. Mediator Kent Jonas was copied on that
 11 correspondence.

12 After receiving notice of this settlement, counsel for Cleves Research, LLC
 13 contacted Plaintiff's counsel in an effort to obtain the terms of that settlement. At that time,
 14 Cleves Research, LLC was advised that the settlement terms were the subject of a
 15 confidentiality agreement between Advantage Technical Resourcing and Plaintiff Perry
 16 Partlow. Cleves Research, LLC maintains that it is entitled to discover the terms of the
 17 settlement, as it would be entitled to an off-set in the amount specified in the settlement
 18 agreement or in the amount of the consideration paid, whichever is more. Plaintiff and
 19 Advantage Technical Resourcing maintain that the settlement terms cannot be disclosed
 20 as that disclosure would breach a bargained for confidentiality agreement.

21 Given that this dispute directly impacts the parties' respective valuations of the
 22 case, counsel requests that the current mediation date of May 10, 2012, be continued so
 23 that this discovery dispute can be resolved in advance of mediation. If a continuance is
 24 granted, mediation will be more fruitful and the likelihood of settlement will increase
 25 dramatically. Any unnecessary preparation for mediation drives up attorneys fees and
 26 thus widens the gap for settlement. As such, a short continuance is wise. Mediator Kent
 27 Jonas has been advised of these developments. All parties and the mediator agree that
 28 the mediation should be moved to June 21, 2012, at 1:00 p.m.

III. ARGUMENT

ADR Local Rule 6-5 requires that a request for extension of the deadline for conducting a mediation be directed to the assigned Judge in a motion or stipulation and proposed order.

Although such requests are to be made fourteen days in advance of the mediation date, special circumstances exist in this instance. The dispute and need to extend the mediation date did not arise until Friday, May 4, 2012, after the settlement between Plaintiff and Co-Defendant Advantage Technical Resourcing was reached.

The parties ask that the Court exercise its discretion and allow a short continuance so that the parties can resolve the dispute and enter into meaningful settlement negotiations without incurring the costs associated with mediation. Attorney fees are included in Plaintiffs claims and these additional and potentially unnecessary costs run the risk of compromising a potential settlement. Moreover, the parties have agreed to engage in a settlement process whereby each party agrees to respond to any settlement offer within 48 hours of being made. The parties hope that this will encourage settlement and obviate the need for mediation.

IV. CONCLUSION

For the foregoing reasons, the parties jointly request the Court continue the mediation to June 21, 2012 at 1:00 p.m.

SO STIPULATED

Date: May 7, 2012

SPINELLI, DONALD & NOTT

By: 

GRANT R. ZEHNDER
Attorneys for Defendant
Cleves Research LLC

Date: May 7, 2012

CONSUMER LAW OFFICE OF WILLIAM
E. KENNEDY

By: 

WILLIAM E. KENNEDY
Attorney for Plaintiff Perry Partlow

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Grant R. Zehnder, attest that concurrence in the filing of this document has been obtained from the other signatories.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 7, 2012 at Sacramento, California.

Date: May 7, 2012

SPINELLI, DONALD & NOTT

By:



GRANT R. ZEHNDER
Attorneys for Defendant
Cleves Research LLC

PROPOSED ORDER

Counsel report that they have reached the following stipulation pursuant to Civil L.R. 7-12 and ADR L.R. 6-5:

The parties agree that the deadline hold a mediation in this matter is extended to June 21, 2012.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 10, 2012



HOWARD R. LLOYD,
United States Magistrate Judge